

## REMARKS

### *Claim Amendments*

Claims 1, 2, 4, 6-17, 19-24, 26-28, 30-32, and 34-43 are pending. Claims 1, 2, 4, 6, 13-17, 27, 32, and 39 are amended. Claims 42 and 43 are newly added. Claims 3, 5, and 18 are canceled without prejudice or disclaimer to the subject matter therein.

Support for the amendments may be found throughout the application as originally filed. *See, e.g.*, Specification, page 18, lines 5-8; page 25; page 26, line 25 to page 27, line 2; page 28, lines 11-20; page 41, lines 28-29; page 42, lines 8-11; page 53, lines 23-26; page 56, line 24 to page 60, line 2. No new matter is added.

### *Allowable Subject Matter*

Applicant greatly appreciates the Examiner's indication that claims 34-38 and 41 are allowable.

### *Specification*

The Examiner objects to the specification's use of embedded hyperlinks and/or other forms of browser-executable code in paragraphs [0037], [0098], [00323], [00359], and [00435].<sup>1</sup>

Applicant respectfully submits that these paragraphs do not contain embedded hyperlinks and/or other forms of browser-executable code. Indeed, this application has already been published and the electronic version of the application does not contain a live web link. Accordingly, Applicant respectfully requests withdrawal of this objection.

### *Rejection Under 35 U.S.C. § 112, Second Paragraph*

Claim 40 stands rejected as allegedly being indefinite because it is not clear what the plant cell is being transformed with and the specification does not define the composition.<sup>2</sup>

Claim 39, from which claim 40 depends, has been amended to further define the composition. In view of this amendment, Applicant respectfully requests withdrawal of this rejection.

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<sup>1</sup> These paragraph numbers refer to US Pub. No. 20070163003—the publication of the instant application. Applicant's references to the specification, however, refer to the specification filed on September 1, 2006.

<sup>2</sup> This rejection refers to claim 34. Claim 40, however, depends from claim 39. Accordingly, the reference to claim 34 appears to be a typographical error.

***Rejection Under 35 U.S.C. § 101***

Claim 39 stands rejected as allegedly being directed to a product of nature, i.e., non-statutory matter.

Claim 39 has been amended to further define the composition. In view of this amendment, Applicant respectfully requests withdrawal of this rejection.

***Rejections Under 35 U.S.C. § 102***

Claims 1, 2, 4, 6-17, 19-24, and 26 stand rejected as allegedly being anticipated by U.S. Patent No. 6,521,816 ("Frohberg")

Claims 1 and 15 have been amended to incorporate the subject matter of claims 3 and 18, respectively. Claims 3 and 18 are not rejected over Frohberg. Accordingly, Applicant respectfully submits the rejection over Frohberg has been rendered moot.

Claims 1, 2, 4, 6-17, 19-24, 26, 30, and 31 stand rejected as allegedly being anticipated by U.S. Patent No. 6,734,340 ("Schewe").

Claims 1 and 15 have been amended to incorporate the subject matter of claims 3 and 18, respectively. Claims 3 and 18 are not rejected over Schewe. Accordingly, Applicant respectfully submits the rejection over Schewe has been rendered moot.

Claim 39 stands rejected as allegedly being anticipated by U.S. Patent No. 6,307,123 ("Kriz").

The examiner asserts that Kriz teaches plants that inherently comprise compositions and endogenous copies encoding R1 and OK1 proteins.<sup>3</sup>

Applicant respectfully traverses.

Kriz discloses R genes.<sup>4</sup> Kriz's R genes are not identical to R1 genes disclosed in the instant application. Indeed, R1 genes encode proteins involved in starch metabolism, whereas Kriz's R genes regulate the production of anthocyanin pigments.<sup>5</sup> Kriz also fails to teach, let alone mention OK1 proteins. Accordingly, Kriz does not teach a composition comprising a nucleic acid encoding a R1 protein or an OK1 protein.

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<sup>3</sup> See Office Action, page 6.

<sup>4</sup> See, e.g., Kriz, claim 2.

<sup>5</sup> See *id.* at col. 7, lines 40-49.

In view of the foregoing, Applicant respectfully requests withdrawal of the rejection over Kriz.

***Rejections Under 35 U.S.C. § 103***

Claims 1, 2, 4, 6-17, 19-24, and 26-28 stand rejected as allegedly being unpatentable over Frohberg.

Claims 1 and 15 have been amended to incorporate the subject matter of claims 3 and 18, respectively. Claims 3 and 18 are not rejected over Frohberg. Accordingly, Applicant respectfully submits the rejection over Frohberg has been rendered moot.

Claims 1, 2, 4, 6-17, 19-24, 26-28, and 30-32 stand rejected as allegedly being unpatentable over Schewe.

Claims 1 and 15 have been amended to incorporate the subject matter of claims 3 and 18, respectively. Claims 3 and 18 are not rejected over Schewe. Accordingly, Applicant respectfully submits the rejection over Schewe has been rendered moot.

***Double Patenting***

Claims 4, 6, 12-13, 15-17, 19, and 23 are rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 5-11 of Frohberg.

Applicant respectfully traverses. The pending claims included in this rejection depend from either claim 1 or claim 15, which have not been rejected. Accordingly, Applicants respectfully request withdrawal of this rejection.

Claims 1-3 and 7-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-12 of copending Application No. 10/591,428.

Applicant respectfully requests that this rejection be held in abeyance until all claims are indicated as allowable.

Claims 1-3, 7-12, and 23-28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-3, 5-8, 21, and 25-27 of copending Application No. 10/591,540.

Applicant respectfully requests that this rejection be held in abeyance until all claims are indicated as allowable.

**CONCLUSION**

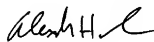
In view of the foregoing, Applicant respectfully requests an indication of allowance of all claims. If the Examiner has any questions relating to this response, or the application in general, he is respectfully requested to contact the undersigned so that prosecution of this application may be expedited.

Respectfully submitted,

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